

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES W. PALMATEER,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

§

§ No. 559, 2006

§

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§ Court Below—Superior Court

§ of the State of Delaware

§ in and for Sussex County

§ Cr. ID No. 0310025709

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Submitted: November 21, 2006

Decided: January 5, 2007

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 5th day of January 2007, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Charles W. Palmateer, filed an appeal from the Superior Court's September 20, 2006 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) In May 2005, Palmateer pleaded guilty to Murder in the First Degree, Possession of a Firearm During the Commission of a Felony, and Robbery in the First Degree. He was declared a habitual offender on the robbery conviction and was sentenced to life imprisonment, plus an additional Level V term. Palmateer did not file a direct appeal from his convictions and sentences.

(3) In this appeal, Palmateer claims: a) his guilty plea is invalid because he was under the influence of psychotropic drugs at the time it was entered and was unaware of the consequences of pleading guilty; and b) his counsel provided ineffective assistance by failing to investigate his mental condition, the effect of the drugs he was taking, possible defenses to the charges against him, and the validity of the predicate offenses underlying his habitual offender status.

(4) Because Palmateer failed to assert his claim of an involuntary guilty plea on direct appeal, he is barred from asserting it in this proceeding.¹ Palmateer has not shown cause for relief from the procedural default and prejudice from a violation of his rights.² Moreover, the transcript of his plea

¹ Super. Ct. Crim. R. 61(i) (3).

² Super. Ct. Crim. R. 61(i) (3) (A) and (B).

colloquy provides no support for consideration of the claim due to a miscarriage of justice.³

(5) Even if the claim were not procedurally barred, the transcript reflects that the plea was entered knowingly and voluntarily. The Superior Court was well aware that Palmateer was taking psychotropic medication and had spent time at Delaware State Hospital and, therefore, engaged in an unusually extensive and probing colloquy with him before permitting him to plead guilty. Palmateer's attorney also explained in detail his client's rationale for accepting the plea agreement and his client's understanding of the proceedings against him. He stated that, in his view, Palmateer was competent to enter the plea.⁴ For all these reasons, we find Palmateer's first claim to be without merit.

(6) Palmateer's second claim is that his counsel provided ineffective assistance. In order to prevail on this claim, Palmateer must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁵ Although not insurmountable, the *Strickland*

³ Super. Ct. Crim. R. 61(i) (5).

⁴ *Williams v. State*, 378 A.2d 117, 119 (Del. 1977).

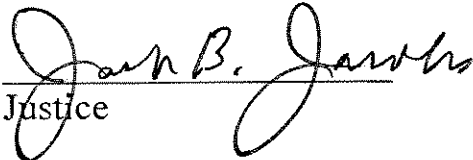
⁵ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”⁶ In the absence of any evidence of error on the part of Palmateer’s counsel or, indeed, that any action by his counsel had an adverse impact on his case, we also find Palmateer’s second claim to be without merit.

(7) It is manifest on the face of Palmateer’s opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:


Justice

⁶ *Flamer v. State*, 585 A.2d 736, 753 (1990).